

September 19, 2013

The Honorable Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Bob Goodlatte  
Chairman, Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable John Conyers, Jr.  
Ranking Member, Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen Leahy and Goodlatte and Ranking Members Grassley and Conyers,

On behalf of industry groups, professional organizations, and leading companies in America's most innovative industries, including technology, communications, manufacturing, consumer products, energy, financial services, medical devices, software, pharmaceuticals, and biotechnology, we are writing to express our opposition to recent legislative proposals expanding the America Invents Act's "covered business method patent" program. These proposals could harm U.S. innovators – a driving force of economic growth and job creation in this country – by unnecessarily undermining the rights of patent holders.

Under Section 18 of the America Invents Act ("AIA"), transitional post-grant review proceedings for "covered business method patents" (CBM program) allow the USPTO to take a second look at a patent after that patent's grant or reissuance, in order to determine its validity. A "covered business method patent" is a business method patent that relates to a "financial product or service." Unlike regular post-grant review proceedings, which require that a proceeding must be requested no later than nine months from a patent's grant date or reissuance date, a request for a "covered business method patent" proceeding can be made at any time until September 16, 2020 – the date the transitional program is scheduled to sunset.

During congressional consideration of the AIA, proponents of Section 18 argued that it was a necessary and temporary measure to review a very narrow class of financial-services-related patents. However, recently-introduced legislation proposes to make the transitional proceedings of Section 18 permanent and expand the definition of "covered business method patent" to include data processing patents used in any "enterprise, product, or service." This means that any party sued for or charged with infringement can *always* challenge an extremely broad range of patents at the USPTO. The request for a proceeding need not be related to financial products or services and can be submitted any time over the life of the patent.

This would have far-reaching implications, because data processing is integral to everything from cutting-edge cancer therapies to safety systems that allow cars to respond to road conditions in real time to prevent crashes. Subjecting data processing patents to the CBM program would thus create uncertainty and risk that discourage investment in any number of fields where we should be trying to spur continued innovation.

The US patent system for more than 200 years has succeeded spectacularly in promoting “the progress of science and useful arts,” as the Founders intended, in part because it has always provided the same incentives for all types of inventions. To expand and make permanent the CBM program would be to turn ill-advisedly and irrevocably in a new direction — discriminating against an entire class of technology innovation.

Moreover, expanding the CBM program could inadvertently undermine many valid patents by giving infringers a new procedural loophole to delay enforcement. Because of the way Section 18 works, infringers would be able to delay legitimate lawsuits they face in district court by initiating CBM proceedings at the PTO. This would buy time to gain market share on innovative, patent-holding competitors.

Expanding Section 18 will not only stymie innovation at home, but it could also impact the relationship of the United States with its trading partners. We have already received questions from our colleagues abroad regarding how this expansion could be justified as compatible with the obligation of the United States under the Agreement on Trade-Related Aspects of Intellectual Property Rights to make patents “available and patent rights enjoyable without discrimination as to . . . the field of technology.” Apart from this question, however, it is clear that if this discriminatory treatment of a select category of patents opposed by special interests in the United States were to be made a permanent feature of U.S. law, it would create a harmful precedent for our trading partners to enact exceptions in their laws to protect special interests in their countries.

As innovators, educators, developers and US employers, we hope Congress will set aside the ideas related to expanding the CBM program as it looks to further improve our patent system.

We look forward to working with you to achieve those goals.

Sincerely,

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ActiveVideo Networks, Inc.  
Adobe Systems  
Advanced Technology Ventures  
Allison Transmission, Inc.  
Architecture Technology Corporation  
Beckman Coulter, Inc.  
BGC Partners, Inc.  
Bi-Level Technologies  
Biotechnology Industry Organization  
Boston Scientific  
Brash Insight Corp.  
BSA - The Software Alliance

Cabochon, Inc.  
California Healthcare Institute (CHI)  
Cantor Fitzgerald L.P.  
Caterpillar, Inc.  
Ciencia, Inc.  
Cleveland Medical Devices Inc.  
Colorado Technology Consultants  
CONNECT  
Cotera Inc.  
The Cummins Allison Corporation  
Dolby Laboratories  
Domain Associates  
Donohue Consulting, Inc.  
The Dow Chemical Company  
DR Systems, Inc.  
DuPont  
Eatoni Ergonomics, Inc.  
Eli Lilly & Company  
Embedded Systems LLC  
Entrepreneurs for Growth  
Entropic Communications, Inc.  
ExploraMed Development, LLC  
Fairchild Semiconductor  
Fairfield Crystal Technology  
Fallbrook Technologies Inc.  
Flocel Inc.  
Forsight Labs  
ForSight VISION4, Inc.  
Foundry Newco XII, Inc. (d/b/a Twelve)  
Freescale Semiconductor  
GearMax USA Ltd.  
General Electric  
General Nanotechnology LLC  
Global Network Computers  
Great Lakes Neuro Technologies Inc.  
Holaira, Inc.  
IBM  
IEEE-USA  
Illinois Tool Works Inc.  
Innovation Alliance  
Inogen, Inc.  
Insight Legal  
Interknowlogy  
Inventors Network of the Capital Area  
IP Advocate  
IP Pipeline Consulting, LLC  
Irwin Research & Development, Inc.

Johnson & Johnson  
Karbonique, Inc.  
KeepSight LLC  
Kovogen, LLC  
Lauder Partners, LLC  
Licensing Executives Society (USA & Canada), Inc.  
Lightstone Ventures  
MediaFriends, Inc.  
Medical Device Manufacturers Association  
MH Systems, Inc.  
Micron Technologies  
Microsoft  
Miramar Labs, Inc.  
Morgenthaler Ventures-Life Sciences  
National Association of Manufacturers (NAM)  
Neodyne Biosciences, Inc.  
NeoTract, Inc.  
NeuroPace, Inc.  
NeuroWave Systems Inc.  
Nevro Corp.  
NuGEN Technologies, Inc.  
NuVasive, Inc.  
OL2, Inc. (OnLive)  
Orbital Research Inc.  
Patent Office Professional Association  
Power Auctions LLC  
Precision Combustion  
PreEmptive Solutions  
Procter & Gamble  
Prometheus Research, LLC  
Qualcomm  
Rearden Companies, LLC  
Restoration Robotics, Inc.  
Sapheon, Inc.  
Software Partners LLC  
Soleon Robotics LLC  
Tessera  
The Foundry LLC  
TM Technologies, Inc.  
Trading Technologies  
U.S. Business and Industry Council  
Vibrynt, Inc.  
Xerox Corporation

Cc: Members of the Senate Committee on the Judiciary  
Members of the House Committee on the Judiciary